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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/842,631	04/27/2001	Wendong Zhen	925-192	8827

7590 09/16/2002

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EXAMINER

DIAZ, JOSE R

ART UNIT

PAPER NUMBER

2815

DATE MAILED: 09/16/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/842,631	ZHEN, WENDONG
	Examiner José R Diaz	Art Unit 2815

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM  
THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) Responsive to communication(s) filed on 12 July 2002.

2a) This action is **FINAL**.      2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) Claim(s) 23,24 and 28 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 23,24 and 28 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.

4) Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_.

5) Notice of Informal Patent Application (PTO-152)

6) Other: *Fig. 1 of Ogata et al.*

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

➤ The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

➤ Claims 23-24 and 28 are still rejected under 35 U.S.C. 103(a) as being unpatentable over Ogata et al. (JP 10-321809) in view of Suh (US Pat. No. 6,338,970 B1). See last Office action mailed on March 1, 2002.

### ***Response to Arguments***

➤ Applicant's reply has overcome the following rejection: 35 U.S.C. 102 (b) as anticipated by or, in the alternative, under 35 U.S.C. 103 (a) as obvious over Yokoyama et al. (US Pat. No. 5,998,819).

Applicant's arguments filed on July 12, 2002 have been fully considered but they are not persuasive. With regard to Applicant's arguments against the claim rejection under 35 U.S.C. §103, the Examiner disagrees in view of the following remarks. First, the reference Ogata et al. discloses a three-layer film as required by Applicant. Such a film could be found in Figure 1(d), which is indicated by the reference signs 6 and 8 (see attachment). However, the translation of the Japanese Patent Ogata et al. does not address specifically the limitations of the size of the grains as claimed, but at least shows the combination of three layers in which the uppermost layer (A) and the

lowermost layer (C) comprising crystal grains which are smaller than the crystal grains of the intermediate layer (B) (see attachment of Figure 1). Second, the reference Suh is not limited to only the “preferred embodiment” of a ferroelectric layer having a dual structure, as argued, but in fact anticipates other well-known modification such as the three layer structure taught by Ogata et al. (see col. 3, lines 38-42). Further, the reference Suh cures the deficiency of the reference Ogata et al. since Suh teaches a well-known method of forming large and/or small crystal grains by annealing a specific layer at high or low temperature (see col. 1, lines 60-65 and col. 3, lines 7-11 and 15-17). Third, a motivation was provided in the last Office action and can be found in column 1, lines 60-62 of Suh. Thus, the references Ogata et al. and Suh are combinable because first, they are from the same field of endeavor and second, a motivation was provided to combine the references. As such, the rejection is considered to be proper.

### ***Conclusion***

➤ **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

***Correspondence***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to José R Diaz whose telephone number is (703) 308-6078. The examiner can normally be reached on 9:00-5:00 Monday, Tuesday, Thursday and Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eddie Lee can be reached on (703) 308-1690. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-7722 for regular communications and (703) 746-3891 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0956.

JRD  
September 13, 2002

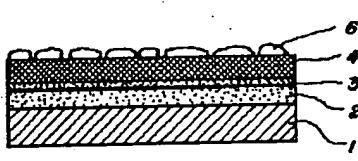


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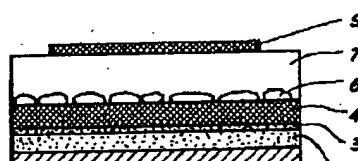
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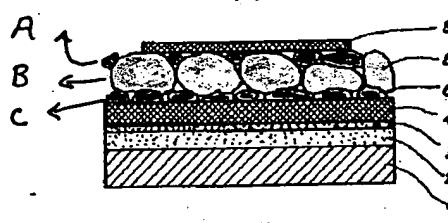
(a)



(b)



(c)



(d)

A - uppermost layer  
B - Intermediate layer  
C - lowermost layer

[Translation done.]

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